

LANAI DEAL CLOSED AFTER COURT HELD FOR TERRITORY

P. C. JONES GIVES HAWAIIAN BOARD FINE PROPERTY

"I DO NOT CARE A RAP WHAT THE POLITICIANS SAY ABOUT YOU, STILL LESS WHAT THEY SAY ABOUT YOUR COURSE. YOU ARE DOING ALL RIGHT, AND YOU CAN BE CERTAIN OF MY UNQUALIFIED SUPPORT."—President Roosevelt to Governor Carter on the Lanai exchange.

THE LANAI EXCHANGE IS NOW CONSUMMATED

Accompanying his announcement of the consummation of the Lanai land exchange, appearing in an interview below, Governor Carter handed the Advertiser reporter the following letter from President Roosevelt replying to his communications on the matter. This letter the Governor has heretofore withheld from publication so as to avoid even color of suspicion, were it published while the deal was under fire in the courts, that the President's approval of his course was used to influence judicial action. Here is the letter:

(Copy.) The White House, Washington, Oct. 10, 1906.
My Dear Governor Carter: Your letters are most interesting. As regards the small islands you make it perfectly clear that we must try to put them under private ownership and under the private ownership of some man rich enough to take measures which will prevent their being rendered absolutely uninhabitable by deforestation and the drying up of the water. I do not care a rap what the politicians say about you, still less what they say about your course. You are doing all right, and you can be certain of my unqualified support.
Sincerely yours,
(Signed) THEODORE ROOSEVELT.
Hon. Geo. R. Carter,
Governor of Hawaii, Honolulu, Hawaii.

Properties Traded for Lanai Domain Governor Carter's Views on the Deal

The Government lost no time in making the transfer of the Lanai property after the Supreme Court handed down the opinion yesterday that went against McCandless in every particular. The fact that the case was dismissed may not leave a chance for him to take the matter to the United States Supreme Court. That is a matter, according to a legal informant, that will have to be argued before one of the Justices on a writ of error, and if the writ is allowed it will probably be taken to the higher court. On the other hand, if the writ is not allowed the matter may be taken in some way, through the local Federal court and the Court of Appeals of the Ninth Judicial Circuit, San Francisco, to the same ultimate destination. These are details, however, that rest with the defeated petitioner and may or may not be pursued.

The exchange of property was made yesterday by the attorney for W. M. Giffard on the following terms:
An exchange of deeds by the Territory and W. M. Giffard, a Government patent being given for all of the lands on the Island of Lanai, Mr. Giffard conveying to the Territory the ill of Kalawabine, containing 293 1-2 acres, and known as the Coney Tantalus property; the property at the corner of King, Likelike and Punchbowl and known as the Hopper homestead; the Maertens homestead at the corner of Beretania avenue, Victoria and Young streets, and the Kamakau property at Punchbowl and Emma streets, adjoining the Royal School. The assessed value of these premises in 1906 was as follows:

Kalawabine	\$ 70,000
Hopper premises	17,500
Maertens home	20,000
Kamakau property	6,500
	\$114,000

The assessed value of the Lanai property last year was \$107,000. Mr. Giffard has, ever since the interruption of the deal by judicial proceedings, held in escrow the titles of the properties undertaken to be conveyed to the Government.

BAROMETER LOW, WIND ABNORMAL

According to Weather Forecaster Stockman there is no indication of a change in the weather. "The wind is abnormal," said he, "and the barometer below normal. Whether it will continue, and how long, we can not tell for we have nothing but our local instruments to inform us. If there was a chain of islands around us about a thousand miles away, and then a weather station on two of them, they would be of service to Hawaii, but to establish weather bureaus on the other islands in this Territory would not help us, they are too close."
"This is the third day of the southerly wind which is abnormal because the northeast trades. It is disagreeable weather and is unpleasant for the tourists who may come on the steamer for I can see no indications of an immediate change."

All entries for the Chinese Athletic field and track meet are requested to be sent in to the secretary before 5 p.m. Feb. 5, 1907.

THE LANAI DEAL DECLARED LEGAL

By a majority the Supreme Court yesterday morning reversed Judge D. Bolt's interlocutory decree overruling the demurrer in the Lanai injunction case. Not only that but, going into the entire merits, the court sustained the respondent's demurrer and dismissed the bill. The case had been fought out by George D. Gear for the petitioner, L. L. McCandless, and Attorney General E. C. Peters and Deputy Attorney General F. W. Milverton for the respondent. There were two respondents at the start, Governor Carter and Commissioner Pratt, but early in the fight Judge De Bolt had dismissed the bill as to the Governor on the ground that his part in the matter, that of approval, could not be exercised before the act of the Commissioner sought to be restrained had been performed.

Justice Hartwell writes the leading opinion, Chief Justice Frazar a concurring opinion and Justice Wilder a dissenting opinion. In the leading opinion the case is thus set forth:

THE CASE STATED.
"This was a bill to obtain an injunction restraining the Governor and the Commissioner of Public Lands from exchanging for private lands certain public lands on the Island of Lanai having an area of 47,689 acres of which all but 1000 acres are held by one Charles Gay under five leases terminating respectively February 9, 1907, of 7400 acres; November 1, 1907, of 7900 acres; June 23, 1908, of 8000 acres; January 1, 1916, including the lands of Kamoku, area 8291 acres, and Poamal, area 9078 acres, and January 2, 1925, of 5000 acres, the total annual rentals being \$1800."

THE LAW FOUND.
Following is the syllabus of the opinion of the court, showing the law of the case:

"Injunctions, as a general thing, ought not to be issued upon statements of material matters made upon information and belief. An averment of the value and kind of lands being largely a matter of information and belief is sufficient."

"Whether a bill by a citizen and taxpayer to obtain an injunction to restrain public officials from unauthorized acts affecting public property exists in cases where there is no pecuniary loss to the plaintiff, quare."

"The power of the Commissioner of Public Lands in the matter of exchanging public for private lands is not found in Sec. 252, R. L., but in Sec. 276, R. L., and is not confined to lands not under lease or to parcels of not over 1000 acres."

"Injunctions are not issued to restrain public officials in the exercise of discretionary power."

THE OPEN QUESTION.

As to the point left a query in the syllabus the following extract from the leading opinion shows that the right of a citizen to interfere through the courts with official acts is held an open question only with regard to the circumstances of this case:

"The right of a citizen and taxpayer to obtain an injunction against official acts involving unauthorized use of public funds has repeatedly been adjudicated in this court." (Castle v. Minister of Finance, Lucas v. Am. Haw. E. & C. Co. and Castle v. Secretary of the Territory are cited.) "In the present case the bill does not show whether the loss of revenue from rent would be offset by rents from land of equivalent value or by saving of revenue which otherwise would be used. In the absence of an averment of loss none can be inferred. The taxpayer would gain from the transaction peculiarly if the Territory should thereby obtain property for such public uses as schoolhouses, for instance, for which otherwise legislative appropriations would be made requiring increased taxation and in such cases the plaintiff's only interest would be his desire that the public land laws be correctly administered."

The court says that perhaps the right in question ought not to be based on the pecuniary loss, "but on the broad ground that any citizen may obtain a judicial inquiry into the validity of such acts and an injunction against them if found to be unauthorized."

But, in view of its sentiment on the pecuniary issue raised, the court finds it "unnecessary to decide the question of the plaintiff's right to sue in this case."

POINTS ELUCIDATED.

Justice Hartwell sketches the purposes of the Hawaiian land laws away back to the Civil Code of 1859. Referring to the contention that the proviso in Sec. 276 of the Revised Laws

"At one time in the proceedings the Commissioner of Public Lands, confident that his exercise of the trust reposed in him was in the public interests, was prepared to make the exchange and take the chances of any punishment for contempt which might be visited on him. Of course, in that event, the Executive had the power to pardon him out."

"Such a course, however, would not have shown the respect due the Judiciary which I think the Executive is entitled to offer them. In other words, it would not have been following the golden rule. I have preferred to follow the other course and set an example of waiting for the final judgment."

"At any time during the proceedings and even now relief could be had against any possible illegality in the transaction. A judge who declined to sign the order for an injunction would not have deprived the complainant of all methods of relief, for the act of any administrative officer can be set aside whenever he does that which is illegal. The incident is now closed."

of 1906, relating to public lands conveyable by exchange, does not contemplate exclusion of the prohibition elsewhere in the land laws of sales of more than 1000 acres and of lands under lease, the leading opinion says:

INTENT NOT EXPRESSED.

"Such limitation, if intended, would appropriately be expressed by inserting after the word 'exchange' the words 'of parcels of not over 1000 acres of unleased land.'"

It is pointed out that the Land Act of 1895 was intended as a homestead and settlement measure. "While the restriction of sales to not over 1000 acre parcels not under lease might secure better prices," Justice Hartwell says, "the restriction does not prevent the same person from becoming purchaser of any number of parcels."

Elsewhere he says: "It is not averred that any of this land is agricultural land suitable for settlers or homestead purposes. None but experts could decide upon the possibility of obtaining water for bringing waste or pastoral land under cultivation."

A United States Supreme Court decision is quoted, partly in these words: "It is not the province of the courts to interfere with the land department in its administration."

In his concurring opinion the Chief Justice thinks the power of the Commissioner to make the exchange exists under Sec. 276. It formerly existed under Sec. 252, but the Act of 1895 inaugurated a new land policy, dividing the public lands into two classes—one designed mainly for purposes of settlement, the other devoted mainly to public uses. As to the question in general he says:

"Courts can not legislate or invade the provinces of the other departments of government in matters of policy. The extent to which power of the kind in question should be conferred upon executive officers is a question of policy for the legislative body; the exercise of the power in a particular case is a question of policy for the executive officers."

THE DISSENTING OPINION.

Justice Wilder dissents from the majority "on the main question involved in this case, which is, whether or not the Commissioner of Public Lands with the approval of the Governor has the power to exchange for private lands more than 1000 acres of public land under lease."

"If that power exists," he goes on to say, "it is to be found in Sec. 276 of the Revised Laws, which, as originally enacted, was a part of the Land Act of 1895."

This is the section where, it has been seen, the majority of the court finds the power in question. Justice Wilder holds with the contention of the petitioner, that the restriction of land sales to not more than 1000 acres is not removed in the law relating to land exchanges, which is contained in a proviso at the end of Sec. 276, and that the only restriction removed in the proviso is that of disposing of the lands at public auction.

SQUADRON NOT DUE FOR FORTNIGHT YET

Instead of being expected tomorrow as reported in this paper yesterday, the Japanese squadron will not be due until the 16th or 17th. Consul General Saito and Admiral Very received cablegrams on Thursday saying that the ships had sailed that day.

It was explained at the Capitol yesterday that the information given to the Advertiser reporter the day before, that the squadron would arrive on the 2nd and leave on the 9th, was derived from a postoffice notice received at the Secretary's office. It happens to be the same old information that Admiral Very gave to the Governor a fortnight ago, but which was not given out for publication.

RECEPTION FOR OFFICERS.

"I have done nothing yet toward arrangements for the entertainment of the officers of the Japanese squadron," said Consul Miki Saito yesterday. "The time of arrival is still indefinite but I have in mind a plan for a reception in the Progress block to which I will send cards of invitation. If this is done, that is if the entertainment is given, it will be in conjunction with the Japanese Merchants' Association. There is a Rear Admiral with the squadron, as to a band I do not know. The squadron is small in number and I have not been advised of any band being on any of the vessels. They will remain here a week and the Japanese residents will all in their power to make the visit a pleasant one for it has been a long time since a Japanese warship visited Hawaii."

THE COUNTY BEACON.

The County Beacon, formerly the Democratic columns of the Bulletin, will appear today as a separate weekly paper with Judge Edings as editor. It will present the Democratic view of local and general politics in a spicy way. Such subjects as "Archer's and Kealoha's Change of Base," "Iaukea Making Good," "Will the Governor Ignore Public Opinion?" "Hustace," "Sam Johnson," etc., are promised lively treatment. There will be at least one cartoon.

A JAMAICAN LADY SPEAKS HIGHLY OF CHAMBERLAIN'S COUGH REMEDY.

Mrs. Michael Hart, wife of the superintendent of Cart Service at Kingston, Jamaica, West Indies, says that she has for some years used Chamberlain's Cough Remedy for coughs, croup and whooping cough and has found it very beneficial. She has implicit confidence in it and would not be without a bottle of it in her home. Sold by Benson, Smith & Co., agents for Hawaii.

(From Saturday's Advertiser.)

The regular monthly meeting of the Hawaiian Board, held yesterday afternoon at their rooms in the Progress block, will ever be memorable in the minds of the large number of members there present. Towards the close of the meeting, after most of the routine work had been attended to, President P. C. Jones called Vice President W. W. Hall to the chair and then proceeded to address the board. Taking the vote just preceding as a text—a vote which authorized the removal of the offices from the Progress block, which has been sold to the Japanese Government on condition that all tenants vacate the premises—Mr. Jones said in substance that Mrs. Jones and he, realizing the difficulty the board faced in securing a new location, and mindful of the frequent changes in headquarters during the past few years, felt constrained to take a hand in providing a permanent home for this honored missionary organization. They had therefore decided to present the board with the handsome property on the northeast corner of Merchant and Alakea streets. Mr. Jones' words, which he addressed, made a deep impression upon the members present, and brief responses were voiced by Messrs. Theodore Richards, W. R. Castle and the secretary, after which the board voted to appoint a committee consisting of Messrs. D. Scudder, H. Bingham, O. H. Gulick, W. D. Alexander, S. E. Bishop, E. S. Timoteo and W. R. Castle to frame a fitting expression of its gratitude for presentation to Mr. and Mrs. Jones.

The property conveyed to the board consists of a piece of land covered by a fine stone building of two stories. The first floor is divided into stores, several of which are rented. The second floor consists of one large, airy room, in which the future headquarters of the board will be located. It is proposed to celebrate the entrance of the board into this new home with a fitting house warming. The removal will be effected during the course of this month. This property, which cost the donors more than \$20,000, will, with the opening of the new wharves and the erection of the Federal building, be in the very center of activity, and must constantly enhance in value. For many years the board was wont to assemble for its monthly meetings in a detached frame building standing in the lot so long occupied by the previous secretary, Rev. O. P. Emerson, now the home of the Japanese Boarding School on Beretania avenue. Subsequently for a time it met in the second floor of the building occupied by the Henry Waterhouse Trust Company, then in the fourth floor front and subsequently in the fourth floor rear of the Boston building. About December 15 last it moved to its present quarters in the Progress block, which it would be loth to leave but for the generosity of Mr. and Mrs. Jones. For many years these staunch friends have been among the foremost supporters of the many enterprises maintained by the board and now they are crowning their long service and oft-repeated generous gifts by housing permanently its center of activity.

Among other important measures decided yesterday, the board voted to take steps to preserve the old historic stone church at Makawao, Maui, where Father Green did such noble work, by a substantial gift to assist in putting the structure in thorough repair. The recent storm blew down the roof and damaged the walls considerably. Doubtless other lovers of past days will help in this worthy enterprise. Impressed with the great importance of the approaching visit of Dean Bosworth, the board appointed Messrs. G. P. Castle, T. Richards and the secretary a committee to cooperate with the representatives of the various churches in making arrangements for the course of Bible lectures which the Dean has promised to deliver. Rev. J. W. Sylvester, D. D., and Mr. J. P. Cooke were elected corresponding members. In view of the successful work of Mr. A. Akana at the Hartford Theological Seminary and School of Religious Pedagogy, it was decided to correspond further with the trustees of these institutions relative to sending more men from Hawaii to pursue courses therein. There are from four to six of the brightest young Hawaiians in the islands looking forward to work of this sort in preparation for the ministry in connection with the board. In fact, there have not been more favorable conditions in the Hawaiian churches for over forty years than those now prevailing. Signs of a deep religious movement among this people abound everywhere.

WORLD'S NEWS CONDENSED FROM LATEST COAST FILES

Missouri has passed an anti-cigarette bill. Secretary Root has returned from Canada. Many thefts are reported in San Francisco. General Alger died of congestion of the lungs. The House naval bill provides for a Dreadnought. The Montana Senate has defeated the anti-pass bill. The ice jam in the lower Columbia river has broken. The prison of St. Lazare, in Paris, is to be torn down. China is adopting regulations to check the use of opium. Twenty Mexican soldiers have been killed by Yaqui Indians. The New York grand jury is investigating the theatrical trust. The German elections were a crushing defeat for the socialists. A blizzard on January 24, tied up railways in Minnesota and Iowa. Andrew G. Blair, one of the best-known public men in Canada, is dead. Lieut. B. A. Page, U. S. A., is to be court-martialed for drunkenness. Three earthquake shocks have been felt in the interior of New York State. The estate of Marshall Field is worth from \$90,000,000 to \$100,000,000. It is rumored in London that Governor Swettenham's career is at an end. John D. Rockefeller undervalued his French wig and it is held for duty. Ex-Chairman Shonts says the Panama canal will be completed in eight years. The commandant of U. S. marines will be raised to the rank of major general.

Mr. J. Bryan has been invited to speak before the Social Science Club at Stanford.

The palace of the Archbishop of Paris will be occupied by the Ministry of Labor.

It is the intention of the British government to give Ireland a national university.

Col. Blake, the organizer of the Irish brigade to help the Boers died of asphyxiation.

The Rubber Goods Manufacturing Co. will be combined with the U. S. Rubber company.

Mrs. Glen Collins, whose trouble with her husband began in Honolulu, is suing for divorce.

The Southern Pacific at San Francisco wants to dig a tunnel under Fort Mason reservation.

All power over the Russian navy has been placed in the hands of the minister of marine.

King Alfonso, tiring of the quarrels of Liberal leaders, is recalling conservatives to power.

Japan's financial budget shows a surplus and the government will not resort to a foreign loan.

The Kingston Daily Telegraph calls Gov. Swettenham a petty obstructionist and praises the Americans.

Major Hersey, of the Weather Bureau, thinks Wellman will reach the North Pole with his airship.

It is thought that the Sultan of Turkey will die by spring and that war in the Balkans will follow.

The remains of Dr. Woolsey, of Oakland, are to be shipped to Monroe county, New York, for burial.

The San Francisco United Railways inform the grand jury that improvements will be made in their service.

Ten shirtwaists which Harry Thaw tore from his wife will be shown in court as evidence of his vicious temper.

William Whiteley, merchant prince of London, was shot dead in his store by a man who afterward tried to commit suicide.

Miss Emma Dunn, leading lady for Richard Mansfield, has resigned because of the blow he strikes her in the role of Peter Gynt.

The bid of Oliver & Bangs to construct the Panama canal has been rejected so far as Bangs is concerned. The latter's standing is not satisfactory.

The wife of Senator Platt has sued two Washington papers for libel, claiming heavy damages, because they connected her name with that of the Platt family coachman.

The Omaha courts have decided that works of art by famous painters, including Van Dyke, Rubens and Vanderwerf, are incident, and that reproductions of them can not be sold in Omaha stores.

Three French bishops have submitted a plan of reconciliation to the Pope. It proposes that the Vatican shall renounce all claims to property sequestered by the French Government in return for a guarantee by the latter that freedom of worship shall be allowed and that the prosecutions already begun shall cease. This plan has been taken under consideration, and the Pope's decision will be made known four days hence.